

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

RALPH B. SMITH

§

v.

§

CIVIL ACTION NO. 5:10cv58

OLIVER BELL, ET AL.

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE
ON PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF

The Plaintiff Ralph Smith filed this civil rights lawsuit complaining of alleged deprivations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On May 21, 2010, Smith filed a motion for injunctive relief, complaining that he was suffering retaliation. Specifically, he alleges that Major McDonald had a “frivolous disciplinary case” written against him in April of 2010, and in October of 2009, the major used excessive force on him. When he complained to the TDCJ Ombudsman, he was told to talk to the unit officials, even though it was these officials who were causing the problems. Smith asked for a temporary restraining order, although he did not make clear what type of injunctive relief he sought.

On May 25, 2010, the Magistrate Judge issued a Report recommending that injunctive relief be denied. The Magistrate Judge set out the standards for granting injunctive relief and concluded that Smith did not show a substantial likelihood of prevailing on his claims nor a substantial threat of irreparable injury. In addition, the Magistrate Judge stated that Smith did not show that his proposed injunctive relief would not disserve the public interest.

Smith filed objections to the Magistrate Judge’s Report on June 3, 2010. In his objections, Smith states that he wishes to restrain the Defendants from “further retaliatory acts,” including

unnecessary uses of force, abusive language and behavior, and “bogus disciplinary reports” or unnecessary cell searches. He states that this request is based on his allegations and those made in other lawsuits, filed by other persons, in this court as well as other district courts in the State of Texas. He contends that these types of allegations have been raised over and over again and should be indicative of a pattern of abuse, although he does not state how allegations raised in other district courts are relevant to his claims regarding persons in the Eastern District of Texas, nor how many of these other allegations have actually been verified in court proceedings.

Smith goes on to allege that the harm to him if the injunctive relief is not granted outweighs the harm to the defendants if it is granted, and that such harm could be irreparable. He argues that granting his requested injunctive relief would not disserve the public interest but would save the state money in processing and pursuing “bogus disciplinary cases,” as well as in the treatment of the effects of physical and mental abuse.

Smith’s objections present nothing to show that he has a substantial likelihood of success on the merits of his claims. The Fifth Circuit has held that conclusory allegations are not sufficient to show entitlement to injunctive relief. Lakedreams v. Taylor, 932 F.2d 1103, 1107 (5th Cir. 1991); *see also* Hancock v. Essential Resources, Inc., 792 F.Supp. 924, 926 (S.D.N.Y. 1992). Smith’s allegations are wholly conclusory and the proposed injunctive relief, seeking to enjoin, *inter alia*, “bogus disciplinary cases” and “unnecessary cell searches,” is both vague and overbroad. *See John Doe #1 v. Veneman*, 380 F.3d 807, 818 (5th Cir. 2004) (discussing vagueness and overbreadth as applied to injunctions). His objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Plaintiff’s motion for injunctive relief, the Report of the Magistrate Judge, and the Plaintiff’s objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff’s objections are without merit. It is accordingly

ORDERED that the Plaintiff’s objections are overruled and that the Report of the Magistrate Judge (docket no. 15) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motion for injunctive relief (docket no. 12) is hereby DENIED.

SIGNED this 2nd day of July, 2010.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE